

DEPARTMENT OF HUMAN SERVICES LICENSING

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Utah Human Services Code relating to a background check of a human services provider.

Highlighted Provisions:

This bill:

- ▶ permits, under limited circumstances, a person to have direct access to children or vulnerable adults, who would otherwise be prohibited from that access due to certain misdemeanor or infraction convictions, in order to permit the person to provide peer counseling, peer support, or supported employment services; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-2-120, as last amended by Laws of Utah 2008, Chapters 3, 17, and 382

Be it enacted by the Legislature of the state of Utah:



Section 1. Section **62A-2-120** is amended to read:

62A-2-120. Criminal background checks -- Direct access to children or vulnerable adults.

(1) (a) Except as provided in Subsection (7), an applicant for an initial license or a license renewal under this chapter shall submit to the office the names and other identifying information, which may include fingerprints, of all persons associated with the licensee, as defined in Section 62A-2-101, with direct access to children or vulnerable adults.

(b) The Criminal Investigations and Technical Services Division of the Department of Public Safety, or the office as authorized under Section 53-10-108, shall process the information described in Subsection (1)(a) to determine whether the individual has been convicted of any crime.

(c) Except as provided in Subsection (1)(d), if an individual has not continuously lived in Utah for the five years immediately preceding the day on which the information referred to in Subsection (1)(a) is submitted to the office, the individual shall submit fingerprints for a FBI national criminal history record check. The fingerprints shall be submitted to the FBI through the Criminal Investigations and Technical Services Division.

(d) An individual is not required to comply with Subsection (1)(c) if:

(i) the individual continuously lived in Utah for the five years immediately preceding the day on which the information described in Subsection (1)(a) is submitted to the office, except for time spent outside of the United States and its territories; and

(ii) the background check of the individual is being conducted for a purpose other than a purpose described in Subsection (1)(f).

(e) If an applicant described in Subsection (1)(a) spent time outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsection (1)(a) is submitted to the office, the office shall require the applicant to submit documentation establishing whether the applicant was convicted of a crime during the time that the applicant spent outside of the United States and its territories.

(f) Notwithstanding Subsections (1)(a) through (e), and except as provided in Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an FBI national criminal history records check, through the Criminal Investigations and Technical Services Division, if the background check of the applicant is being conducted for the purpose

of:

(i) licensing a prospective foster home; or

(ii) approving a prospective adoptive placement of a child in state custody.

(g) Except as provided in Subsection (1)(h), in addition to the other requirements of this section, if the background check of an applicant described in Subsection (1)(a) is being conducted for the purpose of licensing a prospective foster home or approving a prospective adoptive placement of a child in state custody, the office shall:

(i) check the child abuse and neglect registry in each state where each prospective foster parent or prospective adoptive parent resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(ii) check the child abuse and neglect registry in each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

(h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

(i) federal law or rule permits otherwise; or

(ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:

(A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

(B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f) and (g).

(i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to background checks.

(2) ~~[The]~~ Except as provided in Subsection (9), the office shall approve a person for

whom identifying information is submitted under Subsection (1) to have direct access to children or vulnerable adults in the licensee program if:

(a) (i) the person is found to have no criminal history record; or

(ii) (A) the only convictions in the person's criminal history record are misdemeanors or infractions not involving any of the offenses described in Subsection (3); and

(B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years before the date of the search;

(b) the person is not listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1;

(c) juvenile court records do not show that a court made a substantiated finding, under Section 78A-6-323, that the person committed a severe type of child abuse or neglect;

(d) the person is not listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006;

(e) the person has not pled guilty or no contest to a pending charge for any:

(i) felony;

(ii) misdemeanor listed in Subsection (3); or

(iii) infraction listed in Subsection (3); and

(f) for a person described in Subsection (1)(g), the registry check described in Subsection (1)(g) does not indicate that the person is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

(3) Except as provided in ~~[Subsection (8)]~~ Subsections (8) and (9), unless at least 10 years have passed since the date of conviction, the office may not approve a person to have direct access to children or vulnerable adults in the licensee's human services program if that person has been convicted of an offense, whether a felony, misdemeanor, or infraction, that is:

(a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

(b) a violation of any pornography law, including sexual exploitation of a minor;

(c) prostitution;

(d) included in:

(i) Title 76, Chapter 5, Offenses Against the Person;

(ii) Title 76, Chapter 5a, Sexual Exploitation of Children; or

121 (iii) Title 76, Chapter 7, Offenses Against the Family;
122 (e) a violation of Section 76-6-103, aggravated arson;
123 (f) a violation of Section 76-6-203, aggravated burglary;
124 (g) a violation of Section 76-6-302, aggravated robbery; or
125 (h) a conviction for an offense committed outside of the state that, if committed in the
126 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).
127 (4) (a) Except as provided in Subsection (8), if a person for whom identifying
128 information is submitted under Subsection (1) is not approved by the office under Subsection
129 (2) or (3) to have direct access to children or vulnerable adults in the licensee program, the
130 office shall conduct a comprehensive review of criminal and court records and related
131 circumstances if the reason the approval is not granted is due solely to one or more of the
132 following:
133 (i) a conviction for:
134 (A) any felony not listed in Subsection (3);
135 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the
136 date of the search;
137 (C) a protective order or ex parte protective order violation under Section 76-5-108 or
138 a similar statute in another state; or
139 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years
140 have passed since the date of conviction;
141 (ii) a plea of guilty or no contest to a pending:
142 (A) felony;
143 (B) misdemeanor listed in Subsection (3); or
144 (C) infraction listed in Subsection (3);
145 (iii) the person is listed in the statewide database of the Division of Aging and Adult
146 Services created by Section 62A-3-311.1;
147 (iv) juvenile court records show that a court made a substantiated finding, under
148 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;
149 (v) the person is listed in the Licensing Information System of the Division of Child
150 and Family Services created by Section 62A-4a-1006; or
151 (vi) the person is listed in a child abuse or neglect registry of another state as having a

substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

(b) The comprehensive review under Subsection (4)(a) shall include an examination of:

(i) the date of the offense or incident;

(ii) the nature and seriousness of the offense or incident;

(iii) the circumstances under which the offense or incident occurred;

(iv) the age of the perpetrator when the offense or incident occurred;

(v) whether the offense or incident was an isolated or repeated incident;

(vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:

(A) actual or threatened, nonaccidental physical or mental harm;

(B) sexual abuse;

(C) sexual exploitation; and

(D) negligent treatment;

(vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric treatment received, or additional academic or vocational schooling completed, by the person; and

(viii) any other pertinent information.

(c) At the conclusion of the comprehensive review under Subsection (4)(a), the office shall approve the person who is the subject of the review to have direct access to children or vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or vulnerable adult.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this chapter, defining procedures for the comprehensive review described in this Subsection (4).

(5) (a) For purposes of this Subsection (5), "directly supervised" means that the person being supervised is under the uninterrupted visual and auditory surveillance of the person doing the supervising.

(b) A licensee may not permit any person to have direct access to a child or a vulnerable adult unless, subject to Subsection (5)(c), that person is:

(i) associated with the licensee and:

(A) approved by the office to have direct access to children or vulnerable adults under this section; or

(B) (I) the office has not determined whether to approve that person to have direct access to children or vulnerable adults;

(II) the information described in Subsection (1)(a), relating to that person, is submitted to the department; and

(III) that person is directly supervised by a person associated with the licensee who is approved by the office to have direct access to children or vulnerable adults under this section;

(ii) (A) not associated with the licensee; and

(B) directly supervised by a person associated with the licensee who is approved by the office to have direct access to children or vulnerable adults under this section;

(iii) the parent or guardian of the child or vulnerable adult; or

(iv) a person approved by the parent or guardian of the child or vulnerable adult to have direct access to the child or vulnerable adult.

(c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child or a vulnerable adult if that person is prohibited by court order from having that access.

(6) (a) Within 30 days after receiving the identifying information for a person under Subsection (1), the office shall give written notice to the person and to the licensee or applicant with whom the person is associated of:

(i) the office's decision regarding its background screening clearance and findings; and

(ii) a list of any convictions found in the search.

(b) With the notice described in Subsection (6)(a), the office shall also give to the person the details of any comprehensive review conducted under Subsection (4).

(c) If the notice under Subsection (6)(a) states that the person is not approved to have direct access to children or vulnerable adults, the notice shall further advise the persons to whom the notice is given that either the person or the licensee or applicant with whom the person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this chapter:

(i) defining procedures for the challenge of its background screening decision

described in this Subsection (6); and

(ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.

(7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for an initial license, or license renewal, to operate a substance abuse program that provides services to adults only.

(8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or license a person as a prospective foster parent or a prospective adoptive parent if the person has been convicted of:

(i) a felony involving conduct that constitutes any of the following:

(A) child abuse, as described in Section 76-5-109;

(B) commission of domestic violence in the presence of a child, as described in Section 76-5-109.1;

(C) abuse or neglect of a disabled child, as described in Section 76-5-110;

(D) endangerment of a child, as described in Section 76-5-112.5;

(E) aggravated murder, as described in Section 76-5-202;

(F) murder, as described in Section 76-5-203;

(G) manslaughter, as described in Section 76-5-205;

(H) child abuse homicide, as described in Section 76-5-208;

(I) homicide by assault, as described in Section 76-5-209;

(J) kidnapping, as described in Section 76-5-301;

(K) child kidnapping, as described in Section 76-5-301.1;

(L) aggravated kidnapping, as described in Section 76-5-302;

(M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

(N) an offense described in Title 76, Chapter 5a, Sexual Exploitation of Children;

(O) aggravated arson, as described in Section 76-6-103;

(P) aggravated burglary, as described in Section 76-6-203;

(Q) aggravated robbery, as described in Section 76-6-302; or

(R) domestic violence, as described in Section 77-36-1; or

(ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (8)(a)(i).

(b) Notwithstanding Subsections (2) through (4), the office may not approve or license a person as a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the person would otherwise be approved or licensed, the person has been convicted of a felony involving conduct that constitutes any of the following:

- (i) aggravated assault, as described in Section 76-5-103;
- (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- (iii) mayhem, as described in Section 76-5-105;
- (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;

(vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

(9) (a) As used in this Subsection (9):

(i) "Supported employment" means a program within the public mental health system that provides vocational assistance and rehabilitation for a person with a serious mental illness, with an emphasis on enabling the person to obtain and implement vocational skills that will enable the person to obtain independent employment in the community.

(ii) "Peer support services" means a program within the public mental health system in which a recipient of mental health services, under the supervision of a trained mental health worker, provides monitoring, care coordination, and integration services to a person receiving public mental health services.

(b) A person who is prohibited from having direct access to children or vulnerable adults under Subsection (2) or (3) may be approved to have direct access to vulnerable adults for the sole purpose of providing supported employment or peer support services within the public mental health system, if:

(i) (A) the person has not been convicted of a felony;

(B) (I) during the 10-year period immediately preceding the day on which identifying information for the person is submitted under Subsection (1), the person was not convicted of a

276 felony; and

277 (II) the person has never been convicted of a felony described in Subsection (3); or

278 (C) (I) during the 10-year period immediately preceding the day on which identifying
279 information for the person is submitted under Subsection (1), the person was not convicted of a
280 felony;

281 (II) before the 10-year period described in Subsection (9)(b)(i)(C)(I), the person was
282 convicted of a felony described in Subsection (3); and

283 (III) a determination is made, following the comprehensive review process described in
284 Subsection (4), that the person, in providing supported employment or peer support services,
285 will not likely pose a risk to a vulnerable adult;

286 (ii) the person has not pled guilty, or no contest, to a pending charge for:

287 (A) a felony;

288 (B) a misdemeanor described in Subsection (3); or

289 (C) an infraction described in Subsection (3); and

290 (iii) the sole reason that the person is prohibited from having access to children or
291 vulnerable adults under Subsection (2) or (3) is that the person has a misdemeanor or infraction
292 conviction for one or more of the following, unless the victim of the crime was a child or a
293 vulnerable adult, or the conviction for the misdemeanor or infraction occurred within three
294 years immediately preceding the day on which identifying information is submitted for the
295 person under Subsection (1):

296 (A) domestic violence;

297 (B) assault;

298 (C) battery;

299 (D) prostitution;

300 (E) an offense described in Title 76, Chapter 5, Offenses Against the Person;

301 (F) an offense described in Title 76, Chapter 7, Offenses Against the Family; or

302 (G) an offense committed outside of the state that, if committed in the state, would be
303 an offense described in Subsections (9)(b)(iii)(A) through (F).

Legislative Review Note
as of 2-16-10 1:50 PM

Office of Legislative Research and General Counsel

H.B. 377 - Department of Human Services Licensing Amendments**Fiscal Note**

2010 General Session

State of Utah

State Impact

Enactment of this bill will require appropriations of \$34,100 in General Fund and \$16,800 in federal funds. The appropriation will go to the Office of Licensing in the Department of Human Services.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$34,100	\$34,100	\$0	\$0	\$0
Federal Funds	\$0	\$16,800	\$16,800	\$0	\$0	\$0
Total	\$0	\$50,900	\$50,900	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.